IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JAY HOSHAK,)
Plaintiff,	
vs.	2:06cv176 Electronic Filing
SYSCO FOOD SERVICES OF PITTSBURGH, LLC.)))
Defendant.	

MEMORANDUM ORDER

AND NOW, this 28th day of July, 2008, after <u>de novo</u> review of the record and upon due consideration of the magistrate judge's report and recommendation filed on July 3, 2008, and plaintiff's objections thereto, IT IS ORDERED that the Defendants' Motion for Summary Judgment (Doc. No. 34) be, and the same hereby is, granted. The report and recommendation as augmented herein is adopted as the opinion of the court.

Plaintiff's objections are without merit. Plaintiff has advanced no sound basis to distinguish Phillips v. Babcock & Wilcox, 503 A.2d 36, 38 (Pa. Super. 1986), the holding of which is particularly persuasive here where plaintiff elected not to pursue to exhaustion any protection afforded under the Collective Bargaining Agreement. Similarly, plaintiff has failed to advance any persuasive grounds for recognizing a common law cause of action under the circumstances. Consequently, the entry of summary judgment in defendant's favor is appropriate.

s/ David Stewart Cercone
David Stewart Cercone
United States District Judge

cc: Honorable Lisa Pupo Lenihan U.S. Magistrate Judge

Neal A. Sanders, Esquire Dirk D. Beuth, Esquire Law Office of Neal Sanders 1924 North Main Street Extension Butler, PA 16001

Francis C. Rapp, Jr., Esquire Feldstein Grinberg Stein & McKee 428 Boulevard of the Allies Pittsburgh, PA 15219